

State Of Jharkhand And Anr. vs Navin Kumar Sinhga And Anr. on 8 August, 2007

Jharkhand High Court

State Of Jharkhand And Anr. vs Navin Kumar Sinhga And Anr. on 8/8/2007

JUDGMENT

M.Y. Eqbal, J.

1. This appeal under Clause 10 of the Letters Patent is directed against the judgment and order dated 9.4.2007 passed in W.P.(C) No. 1662 of 2007, whereby learned Single Judge dismissed the writ application filed by petitioner/appellant-State of Jharkhand and held that the order passed by the Information Commissioner, Jharkhand is legal, valid and justified.

2. The facts of the case lie in a narrow compass:

The Urban Development Department, Govt. of Jharkhand advertised invitation of proposals for Project Management Consultancy Service including detailed engineering design and construction supervision for sewerage and drainage system for the capital city of Ranchi. Pursuant to the said tender notice the following six consultants purchased tender papers. They were namely

(1) Meinhardt (Singapore) Pvt. Ltd.

(2) STUP Consultants (P) Ltd.

(3) GKW Consultant,

(4) Tahal Consulting Engineers Ltd.,

(5) Burchill Partners Pvt. Ltd.

(6) RITES LTD.

3. Out of six consultants, the following four consultants filed their

tender and their names are as under:

- (1) Meinhardt (Singapore) Pvt. Ltd.
- (2) GKW Consultant.
- (3) Tahal Consulting Engineers Ltd.
- (4) Burchill Partners Pvt. Ltd.

4. According to the Urban Development Department, the aforesaid four consultants were found eligible but on technical appraisal held on 5.10.2005, Meinhardt (Singapore) Pvt. Ltd. Singapore secured maximum marks and as such, work order was issued to it on 22.6.2006.

5. In the tender notice Clause 3.1.1, 3.1.2 and 3.1.3 were the conditions of eligibility for submission of tender. In the supplementary affidavit filed by the respondent Clause 3.1.1. 3.1.2 and 3.1.3 have been quoted, which reads as under:

3.1.1 Following documents must be furnished in proof of eligibility:

- (i) Firm's experience;
- (ii) Firm's turnover for the last 3 years and a certified copy of the audit report in support of the details.
- (iii) List of equipment and the details of the office and key persons employed by the firm.
- (iv) Works in hand.

3.1.2 The experience certificate from clients in support of having completed project management detailed project report, preparation of tender documents, bid process management, construction supervision for commissioning of sewerage and drainage for a development project. Scope of services rendered by the firm be clearly indicated in the certificate from the client.

3.1.3 The minimum essential requirement in respect of eligibility has been indicated below. Proposal deficient in any of these requirement will not be considered for further evaluation.

6. In the tender for sewerage, the Urban Development Department,

Government of Jharkhand has changed its earlier stand of tender i.e. quality and cost based selection to quality based selection.

7. After tender process was completed and work order was issued the respondent No. 1 submitted a letter of request to Deputy Secretary, Urban Development Department, Govt. of Jharkhand with requisite fee seeking information and disclosure of copies submitted by various bidders as per Clause 3.1.1, 3.1.2 and 3.1.3 of tender notice on the basis of which they were declared qualified for further evaluation by the Tender Committee. Respondent also requested disclosure of note sheets with regard to the change of the condition of the tender and its approval from the competent authority. Petitioner/Appellant No. 2 Deputy Secretary, Urban Development Department intimated the respondent that the information desired by him in Column No. 1 was being made available but the information desired in Column No. 2 cannot be supplied as because the same is exempted from disclosure of information under the provision of Section 8(1)(d) of Right to Information Act, 2005. Being aggrieved by the said intimation, respondent-applicant preferred appeal being Appeal No. 2 of 2006 before the Principal Secretary, Urban Development Department, Govt. of Jharkhand being the First Appellate Authority.

8. The appellate Authority vide order dated 20.12.2006 directed Information Officer to come alongwith entire records relating to Ranchi Sewerage System within a week from the date of receipt of order. Since hearing could not be done, the respondent-applicant approached the Jharkhand State Information Commissioner to have a ruling that the personal hearing as per right to information is necessary. The said application was treated as second appeal and the Information Commissioner sent a notice to the appellant and after hearing the parties the Information Commissioner ruled that the desired information as demanded by the respondent-applicant and denied by the appellant is wrong as the said information is not covered under the provision of Section 8(1)(d) of the Act and directed the Public Information Officer of the Department to make the said information available to the respondent-applicant. The appellant-State thereafter, moved this Court challenging the said order passed by the Information Commissioner in WPC No. 1662/07. Learned Single Judge held that information sought for by respondent-application does not come within the exception provided under Section 8(1)(d) of the said Act. Accordingly, the writ application was dismissed.

9. Respondents case is that he made a request for furnishing the following information relating to the said tender:

(1) Certified copies submitted by various bidders on the basis of which they were declared qualified for further evaluation by the Tender Committee.

(2) In the Tender for sewerage, the Urban Development Department, Government has changed its earlier stand of tender i.e. quality and cost based selection to quality based selection. The note sheet with regard to this change and its approval from the Competent authority may kindly be provided.

10. Respondents further case is that appellant provided part information with regard to second information but the information sought for as mentioned above in Column 1 has not been supplied to the respondent on the ground that the same cannot be supplied as because the same is exempted from disclosure of information under the provisions of Section 8(1)(d) of the Act.

11. Mr. R.R. Mishra, learned Counsel appearing for the Appellant-State of Jharkhand assailed the impugned order passed by the learned Single Judge as being contrary to law and the facts available on record. Learned Counsel firstly submitted that respondent No. 1 has no locus standi to make request application for supply of information as desired by him under the Right to Information Act inasmuch as he was neither tenderer nor participated in the bid. Learned Counsel submitted that learned Single Judge has failed to appreciate that the disclosure of information includes commercial confidence, trade secrets and/or intellectual property and disclosure of the same would harm the competition position of the third party. Learned Counsel then submitted that the disclosure of information in respect of the document of the bidder shall hamper the healthy competitions of the prospective tenderers and this aspect of the matter has not been considered either by the Authority under Right to Information Act or by the learned Single Judge.

12. Mr. B. Poddar, learned senior counsel for the respondent No. 1, on the other hand submitted that the tender in question is for the consultancy work and the consultancy fee was fixed at Rs. 20 crores. Learned Counsel drew our attention to supplementary affidavit filed by the writ petitioner as directed by this Court in the order-dated 28.6.2007. In the supplementary counter affidavit, it is stated that after the tender process was completed and the work order was issued to Meinhardt (Singapore) Private Limited a request application was filed before the Deputy Secretary, Urban Development Department, Govt. of

Jharkhand for supply of information with respect to Clause 3.1.2 and 3.1.3 of the tender document which, inter alia, provides for furnishing of the documents in proof of eligibility including the experience certificate. It is stated that information sought for with regard to disclosure of the document shall not and cannot be claimed to be exempted under Section 8(1)(d) of the Act. Learned Counsel submitted that the said successful bidder M/s Meinhardt Private Limited has submitted experience certificate which is false and fabricated document. Learned Counsel drawn bur attention to Annexure-G v/hich is a proceeding dated 9.3.2006 of the Jharkhand State Assembly to show that a discussion was held in respect of appointment of Consultancy regarding construction of drainage and sewerage in the area of Ranchi City. In the said discussion so many questions were asked and allegations were made regarding work of sewerage and drainage system in the Ranchi City. Learned Counsel further submitted that information sought for by respondent No. 1 is with regard to their certificate of eligibility to participate in the tender which has not been exempted under Section 8(1)(d) of the Act.

13. M/s Meinhardt (Singapore) Pvt. Limited, who is a successful bidder has filed as intervention petition and also a counter affidavit supporting the contention of the appellant-State of Jharkhand.

14. Mr. Anil Kumar Sinha, learned Senior Counsel appearing on behalf of the intervener, firstly submitted that in the request letter filed by the respondent No. 1 seeking information, there was no mention as to certified copy of which document he was seeking for. Learned Counsel submitted that when the First Appeal filed by the writ petitioner was pending, Second Appeal filed before the Chief Information Commissioner without waiting for the first appellate authority, could not have been entertained. Learned Counsel submitted that intervenor was neither made party nor was given notice before the impugned order was passed by the Chief Information Commissioner or by the learned Single Judge although it was mandatory under Section 8(1)(d) of the said Act.

15. Before appreciating the rival contentions made by the learned Counsels, I would first like to discuss the relevant provisions of Right to Information Act, 2005 under which relief was sought for.

16. The Right to Information Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. By the said Act 2005, the earlier Act, namely, the Freedom

of Information Act, 2002 has been repealed.

17. As a matter of fact, the earlier Act, namely, Freedom of Information Act, 2002 was not more effective and therefore, in order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information.

18. The Law Commission of India in its 179th report on Public Interest Disclosure and Protection of Information, the Commission made a review that a statute enabling complaints to be made by public servants against other public servants, the ground for protection of such complaint will not fail the right to privacy emanating from Sub-clause (a) to Clause (1) of Article 19 of the Constitution.

19. Article 19 of the Constitution ensures to the citizens to a wide range of freedom. The Supreme Court has held that right to know and be informed would make right to free speech and expression complete. Besides, freedom has obtained access to information that has bearing to the subsistence of life that would functionalize the right to life and livelihood. There is a worldwide trend in democratic countries to have a legislation for assuring to the citizens, the right of access to information of the public authorities as part of the efforts to promote openness, transparency and accountability in the administration and to ensure greater participation of the public in decision-making.

20. Considering the suggestions given by Parliamentary Standing Committee, Home Affairs called for report of Pranab Nath Mukherjee Committee and also 179th Law Commission report and the constitutional guarantee vis-a-vis Supreme Court observations the Parliament enacted the right to Information Act, 2005.

21. From reading of the Preamble and the object of the Act, it is manifestly clear that the scope of freedom of information has been enhanced with the object and purpose to give right to information to its citizens so that there exists transparency in Government dealings.

22. Section 2 of the Act defines various authorities. Section 3 provides that all citizens shall have the right to information subject to the provisions of the Act. Section 4 prescribes the obligation of public authorities regarding maintenance of record, publication of

functions and duties, power and duties of the Officers and employees, etc. Section 5 deals with the procedure for designation of Public Information. It, inter alia, states that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means in the language of the area in which the applications made, accompanying such fee as it may be prescribed, to the Central Public Information Officer or the State Public Information Officers. Section 6 reads as under:

Section 6 Request for obtaining information.--(1) A person, who desires to obtain any information under this act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,

(i) Which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this Sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

23. From bare reading of Section 6 of the Act, it is abundantly clear that any person who desires to obtain information under the Act shall have to make a request in writing to the authority prescribed under the Act. It is not necessary that a person seeking information is a citizen of the country or has a direct interest in the matter. As a matter of fact, the provision of Section 6 confers right to information to any person for the obvious reason that right to information flows from the right to expression. At this juncture, we would like to refer a ratio decided by the supreme Court in the case of *The State of Uttar Pradesh v. Raj Narain and Ors.* AIR 1975 Supreme Court S65. In that case, the Supreme Court discussed about the power of the Court to direct production of document and under what circumstances, a privilege can be claimed as contained under contemplated under Section 123 and 162 of the Evidence Act. While discussing the issue, their Lordships held that the people of this country have a right to know every public act, every thing that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its hearing. The Court observed:

74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest of bureaucratic routine. The responsibility of official to explain and to justify their acts is the chief safeguard against oppression and corruption:

Whether it is the relations of the Treasury to the Stock Exchange, or the dealings of the Interior Department with public lands, the facts must constitutionally be demandable, sooner or later, on the

floor of Congress. To concede to them a sacrosanct secrecy in a Court of justice is to attribute to them a character which for other purposes is never maintained--a character which appears to have been advanced only when it happens to have served some undisclosed interest to obstruct investigation into facts which might reveal a liability.

To justify a privilege, secrecy must be indispensable to induce freedom of official communication or efficiency in the transaction of official business and it must be further a secrecy which has remained or would have remained inviolable but for the compulsory disclosure. In how many transactions of official business is there ordinarily such as secrecy? If there arises at any time a genuine instance of such otherwise inviolate secrecy, let the necessity of maintaining it be determined on its merits/

24. In the light of the provision contained in Section 6 of the Act and the principle laid down by the Supreme Court, the contention of Mr. A.K. Sinha, learned Senior Counsel appearing for the intervener that the respondent has got no locus standi to make a request for disclosure of the information, has no leg to stand and the same is rejected.

25. Section 7 lays down the procedure for disposal of request. According to this Section, the appropriate authority on receipt of the request shall either provide the information or reject the request for any of the reasons specified in Sections 8 and 9 of the Act. Sections 8 and 9 are relevant Sections for the instant case, which read as under:

Section 8 Exemption from disclosure of information.(1)b

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;

Provided that the information, which cannot be denied to the Parliament or a state Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 or 1952 nor any of the exemptions permissible in accordance with Sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of Clauses (a), (c) and (i) of Sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall

be provided to any person making a request under that Section.

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

Section 9. Grounds for rejection to access in certain cases.--Without prejudice to the provisions of Section 8, a Central Public Information Officer or State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve in infringement or copyright subsisting in a person other than the State.

26. Section 8(1)(d) is relevant so far instant case is concerned which, inter alia, provides that the authority may refuse to give information relating to commercial confidence, trade secret or intellectual property, disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The question, therefore, that falls for consideration is as to whether disclosure of various documents submitted by the bidders is a trade secret or commercial confidence or intellectual property. Prima facie, we are of the view that once a decision is taken in the matter of grant of tender, there is no justification to keep it secret. People have a right to know the basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the eligibility of a tender or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover, disclosure of information, sought for by the petitioner, cannot and shall not be a trade secret or commercial confidence; rather disclosure of such information shall be in public interest, inasmuch as it will show the transparency in the activities of the Government.

27. As stated in the supplementary counter affidavit, the documents were provided to the Legislative Assembly as per the reports submitted by one M.L.A., Chairman of Jharkhand Vidhan Sabha Committee. The document, disclosure of which sought for, is the experience certificate issued by one company in favour of successful bidder and also the document related to turn over and profit of the limited company. Since

the tender process is completed and contract has been awarded, it will not influence the contract. Besides the above, a citizen has a right to know the genuineness of a document submitted by the tenderer in the matter of grant of tender for consultancy work or for any other work. As noticed above, the tender process is completed and the contract has been awarded, therefore, it will not influence the contract. In any view of the matter, the document in question cannot be treated as trade secret or commercial confidence. In our considered opinion a contract entered into by the public authority with a private person cannot be treated as confidential after completion of contract.

28. Mr. A.K. Sinha, learned senior counsel appearing for the Intervener-respondent, whose document was to be disclosed, submitted that the intervener ought to have been given notice by the State Public Information Officer when request was made by a person for the disclosure of such document submitted by a third party, which is mandatory requirement of Section 11 of the Act. Learned Counsel, therefore, submitted that the order was passed in violation of principles of natural justice. There is no dispute that Section 11 provides that where Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose any information or record on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party of the request giving him opportunity to make submission as to whether such document should be disclosed or not.

29. In the instant case, admittedly no notice was given by the State Information Officer but the order was passed in favour of the third party inasmuch as the State Information Officer refused to disclose the document on the ground that the same is exempted under Section 8(1)(d) of the Act. Hence, there is no violation of principles of natural justice. Be that as it may, this Court has entertained the intervention application and gave full opportunity of hearing to the Intervener on the question whether such document comes within the purview of Section 8(1)(d) of the Act. We are, therefore, of the opinion that the question of violation of principles of natural justice does not arise.

30. Having regard to the facts and circumstances of the case and in the light of the law discussed hereinabove, the order passed by the Chief Information Commissioner and the learned Single Judge warrant no interference by this Court. This Court holds that information sought for with regard to documents does not come under the purview of Section 8(1)(d) of the said Act.

31. For the reasons aforesaid, there is no merit in this appeal which is, accordingly, dismissed.

D.K. Sinha, J.

32. I agree.